

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re :
: **Chapter 11**
SEARS HOLDINGS CORPORATION, et al., :
: **Case No. 18-23538 (RDD)**
:
Debtors.¹ : **(Jointly Administered)**
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**OBJECTION OF RETAIL CONTRACTORS OF PUERTO RICO TO THE
FIFTH SUPPLEMENTAL NOTICE OF CURE COSTS AND POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

UNEXPIRED LEASES IN CONNECTION WITH THE GLOBAL SALE TRANSACTIONS

Retail Contractors of Puerto Rico, Inc. (“RCOFPR”), by and through their attorneys Schafer and Weiner, PLLC, hereby files this Objection (the “Objection”) to the *Fifth Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Global Sale Transaction* [Docket Number 3097] (the “Fifth Supplemental Cure Notice”) and states as follows:

BACKGROUND

1. On October 15, 2018 (the “Petition Date”) the above-captioned debtors (together, the “Debtors”) each filed voluntary petitions for bankruptcy relief under chapter 11 of title 11 of the United States Code, codified at 11 U.S.C. §101, *et seq.* (the “Bankruptcy Code”).² The Debtors have continued to operate their business and manage their properties as debtors-in-possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

2. RCOFPR and certain of the Debtors, Sears, Roebuck and Co. and Kmart Corporation (together, the “Contract Debtors”), are parties to a series of contracts for the provision of construction services for several of the Contract Debtors’ stores (each a “Contract” and together the “Contracts”).

² The use of “sections” shall refer to the Bankruptcy Code unless otherwise specified herein.

3. On November 19, 2018, this Court entered its *Order Approving Global Bidding Procedures and Granting Related Relief* [Docket No. 816] (the “Global Bidding Procedures”).

4. In accordance with the Global Bidding Procedures, on January 18, 2019, the Debtors filed their *Notice of Successful Bidder and Sale Hearing* [Docket No. 1730]. As part of the asset purchase agreement entered into between Debtors and the successful bidder (the “Buyer”), Sears would file lists of executory contracts that the Buyer could assume as part of the sale, as well as the corresponding cure costs for each contract.

5. Also on January 18, 2019 the Debtors filed their *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sales Transaction* [Docket No. 1731] (the “First Cure Notice”). Exhibit A to the First Cure Notice lists one (1) of the Contracts. *See* First Cure Notice, Exhibit A, page 244, no. 5848. The First Cure Notice indicates a cure amount of \$747,424.

6. On March 29, 2019 the Debtors filed the *Fourth Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Global Sale Transaction* (the “Fourth Supplemental Cure Notice”) [Docket No. 2995]. Exhibit A to the Fourth Supplemental Cure Notice lists ten (10) of the Contracts. *See* Fourth Supplemental Cure Notice, Exhibit A, page on, Nos. 3-12. Among these ten Contracts is the Contract listed in the First

Cure Notice. The Fourth Supplemental Cure Notice indicates that the cure amount for each Contract is \$0.00.

7. On April 8, 2019 RCOFPR filed a timely objection to the Fourth Supplemental Cure Notice (the “Initial Objection”) that, among other things, corrected the Debtors’ proposed cure amounts listed in the Fourth Supplemental Cure Notice. Among these corrections, RCOFPR corrected the cure amount related to the Contract for work on the Debtors’ store number 1905 in San Juan, Puerto Rico (the “Store 1905 Contract”). RCOFPR listed the correct cure amount for the Store 1905 Contract at \$271,846.66.

8. On April 9, 2019 the Debtors filed their Fifth Supplemental Cure Notice. Exhibit A to the Fifth Supplemental Cure Notice lists the Store 1905 Contract and again listed the cure amount at \$0.00 (the “Proposed Cure Amount”)

OBJECTION

9. The Proposed Cure Amounts is incorrect. As RCOFPR previously stated in the Initial Objection, the correct cure amount for the Store 1905 Contract is \$271,846.66 (the “Corrected Cure Amount”).

10. Prior to assumption of the Store 1905 Contract, the Debtors are required by §365(b)(1) to cure all outstanding defaults under the Store 1905 Contract and compensate RCOFPR for any actual pecuniary loss.

11. The Proposed Cure Amount is incorrect. RCOFPR asserts that the correct cure amount for the Store 1905 Contract is \$271,846.66.

12. RCOFPR reserves the right to amend and/or supplement the Objection, including, without limitation, to include additional amounts that arise or become known to RCOFPR prior to assumption, to add or supplement objections to the Proposed Cure Amount, and to raise any additional objections to the assumption of the Store 1905 Contract.

13. RCOFPR also reiterates, reserves, and maintains the objections raised in the Initial Objection.

WHEREFORE, RCOFPR respectfully requests that this honorable Court require the Debtors or the Buyer to pay RCOFPR the Corrected Cure Amount as a condition to the assumption of the Store 1905 Contract and grant RCOFPR all such further relief as this Court deems just and proper.

Respectfully submitted,

SCHAFER AND WEINER, PLLC

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Dated: April 17, 2019